not an equity judge to-day would consider himself bound by this rule of alleged expediency,[2] the definitive abolition of it would remove a pitfall from an important field of modern litigation, and is to be desired. Such is the conclusion reached by Professor William Draper Lewis, who has exhaustively set forth in a recent article what he believes to be the only possible, that is, the historical, explanation of the rule. *Injunctions against Nuisances and the Rule Requiring the Plaintiff to Establish His Right at Law*, 56 U. P. L. Rev. 290 (May, 1908). No explanation lies in the necessity of jury trial, inasmuch as equity decides difficult questions of fact in other kinds of injunction cases, as waste, unfair trade competition, trespass and interruption of easement when title is not disputed, and others; moreover, a feigned issue at law, or the statutory equivalent, may always be directed. Professor Lewis fastens the responsibility for the rule chiefly upon Lord Eldon,[3] who stood at the end of a century in which the doctrine that no question of title to land could be tried except at law had become fixed.[4] This prohibition extended to injunctions in support of easements, since these if allowed would usually decide the title to the land or the existence and extent of the title to the easement. On the other hand, no difficulty was felt in entertaining a bill to enjoin waste, because in such a case no question of title would probably be in issue. The mistake which the writer ascribes to Lord Eldon was that he classed bills to abate nuisance, which involve no question of title, with cases on easements instead of with those on waste. The confusion of nuisance with interruption of easement may be traced to the common law assize of nuisance, which lay for either tort, and to the consequent confused nomenclature. The rule, then, not only is useless in modern practice, but grew out of an ancient error of principle.

Some doubt, however, may be cast on the writer's contention that Lord Eldon erred when he applied the same rule of procedure to nuisances as to interruption of easements. Professor Lewis defines nuisance to be the interruption of the plaintiff's use of his property, not involving a trespass, and not actionable unless actually damaging; whereas interruption of easement involves interruption of possession, and is actionable without present damage: in the former class he would put the violation of a landowner's right to pure air, in the latter the violation of a riparian owner's right to pure water. But it does not appear that questions of title would more likely be raised by a bill to enjoin pollution of water than by one to protect air. Again, although the writer admits that the point is open, he indicates his view that a prescriptive right to commit a nuisance[5] ought not to be countenanced. It is submitted, however, that if the contrary view should be taken, many suits to abate nuisance would present questions of title similar to those presented in the case of an easement claimed by prescription. Finally, at this date certainly the same practical considerations which move the writer to deprecate the rule as to nuisances should apply to the analogous rules governing trespass and easement cases where title is disputed; for the modern landowner probably values the mere title to his land no higher than his right to restrain interference with the enjoyment of it — he needs a common law action no more to protect the one than the other.

THE ADMINISTRATION OF INTERNATIONAL LAW BY STATE COURTS. — As international law comes to be more generally recognized as a complete, though perhaps not yet well defined, system of law, the question naturally presents itself as to how far the citizens of a state, as individual members of society, are to be bound by its precepts. Our courts have frequently decided that when it becomes necessary in the adjudication of a case they will take judicial cognizance of and apply the accepted principles which govern the family of nations.[1]

---

[2] See Ames, Cas. Eq. Jur. 560 *n.*
[3] Crowder *v.* Tinkler, 19 Ves. 617.
[4] Pillsworth *v.* Hopton, 6 Ves. 51.
[5] See 2 Wood on Nuisance, Ch. 20.

[1] Moultrie *v.* Hunt, 23 N. Y. 394, 396.

This being so, it has been asserted that international law has been judicially established to be law in the same sense that national law is, and that it constitutes an integral part of the municipal law of England and of the United States.[2] The soundness of this conclusion is questioned in a recent article. *The Legal Nature of International Law*, by W. W. Willoughby, 2 Am. J. of Int. L. 356 (April, 1908). The author admits as true the statement that our courts will and constantly do adopt and apply established principles of international law; but not, he says, before these principles have first been impliedly adopted by the English or American state as a portion of its municipal law. These principles, the product of international usage and agreement, derive their legal force, when applied in the courts, from the sanction of the state whose laws the court administers. But the apparent conflict of opinion between Mr. Willoughby and Dr. Scott, when reduced to its lowest terms, seems to resolve itself into a matter of phraseology.

When any number of persons associate themselves in one political unit, they must necessarily adopt a law, conceived of as an entity. For "a state is a body of free persons united together for the common benefit, to enjoy peaceably what is their own, and to do justice to others."[3] But that assumes the existence of rights. Rights are created by law, and without law there can be no rights; so that the creators of the state in assuming that rights exist, must necessarily adopt, directly or impliedly, a law from which those rights spring. Having adopted law, as yet undefined and perhaps unknown, unless embodied in a statute, the state creates courts of justice into which all men may bring their disputes for settlement; and it is the duty of the judges to discover the law of the case, that is, to apply that part of law which has created the rights and through them the wrongs of the litigants. These decisions are evidence of the law.[4] By this process have our several states adopted non-statutory common-law principles, and in like manner, Mr. Willoughby says, the principles of international law have been adopted into the law of the state: "thus, in fact, these principles are recognized and enforced, not as international law, but as municipal law." This must in fact be so; for the courts of any state administer only one system of law, comprising many branches, such as contracts, torts, and international law.

It seems difficult to find any real point of difference between the author's conclusions and those reached by Dr. Scott, which he purports to refute. The two seem to uphold, perhaps in different words, the same and, as it undoubtedly seems, the correct view.

AMENDMENTS TO THE CODE OF CIVIL PROCEDURE IN 1908. *Anon.* Citing recent decisions affecting the law in New York. 14 Bench & Bar 51.

AMERICAN THEORY OF INTERNATIONAL ARBITRATION, THE. *Anon.* Comparing the arbitration treaties of 1904 with those of 1908. 2 Am. J. of Int. L. 387.

ASSIGNABILITY OF LIFE INSURANCE POLICY TO ONE PAYING THE PREMIUM. *Edwin Maxey.* 20 Green Bag 232.

BOMBARDMENT BY NAVAL FORCES. *James Brown Scott.* A thorough treatment of the authorities and of the declarations of the Hague conferences on the subject. 2 Am. J. of Int. L. 285.

BURGERMEISTER, GERMANY'S CHIEF MUNICIPAL MAGISTRATE, THE. *Joseph Torrey Bishop.* 2 Am. Pol. Sci. Rev. 396.

CHANGE OF THE PROPERTY IN GOODS BY SALE IN MARKET OVERT, THE. *J. G. Pease.* Origin and history of law as to Market Overt. 8 Colum. L. Rev. 375.

CHARACTER OF GOVERNMENT DEPENDS UPON ITS LEGAL PROCEDURE. *W. T. Hughes.* Maintaining that radical changes in legal procedure are unwise. 3 Ill. L. Rev. 24.

CHILDREN'S COURTS. *J. J. Kelso.* A discussion of methods and results. 28 Can. L. T. 163.

---

[2] The Legal Nature of International Law, by James Brown Scott, in 1 Am J. of Int. L. 831.

[3] Chisholm *v.* Georgia, 2 Dall (U. S.) 419, 455.

[4] 1 Bl. Comm. 68; Swift *v.* Tyson, 16 Pet. (U. S.) 1, 18.

CLAIM OF A FEDERAL RIGHT TO ENFORCE IN ONE STATE THE DEATH STATUTE OF ANOTHER, THE. *Henry Schofield.* 3 Ill. L. Rev. 65.

CODE OF LEGAL ETHICS, A. *Charles A. Boston.* Submitting a specimen code. 20 Green Bag 224.

CONSTITUTIONALISM. *George E. Fellows.* An historical discussion of the adoption of the Constitution. 1 Me. L. Rev. 122.

CORPORATION IN THE STREET, THE. *Charles L. Dibble.* Pointing out the modern tendency towards granting wider privileges in the use of streets and exacting greater remuneration. 6 Mich. L. Rev. 624.

COURT OF SPECIAL SESSIONS OF THE CITY OF NEW YORK, THE. *W. A. Purrington.* A discussion of this court's work and usefulness. 13 Bench & Bar 12.

DARTMOUTH COLLEGE CASE, THE. *Robert Sprague Hall.* Arguing that the scope of the decision should be limited to educational institutions. 20 Green Bag 244.

DOCTRINE OF THE LIABILITY OF THE MASTER FOR THE TORTS OF HIS SERVANT, AND ITS ANOMALIES IN ILLINOIS, THE. *Charles Lederer.* Submitting that public policy is the basis of the master's liability. 2 Ill. L. Rev. 553.

EFFECT OF A GRANT OF LAND AND THE REFORM OF REAL PROPERTY LAW. *T. Cyprian Williams.* A discussion of the effect of a mortgage deed on seisin. 52 Sol. J. 527.

EFFECT OF A GRANT OF LAND BY WAY OF MORTGAGE. *T. Cyprian Williams.* Arguing that by a mortgage deed the mortgagee becomes seised in fee without taking possession. 52 Sol. J. 510.

EVOLUTION OF THE ENGLISH JOINT STOCK LIMITED TRADING COMPANY, THE. *Frank Evans.* 8 Colum. L. Rev. 339.

EXECUTION OF SEALED INSTRUMENTS BY AN AGENT, THE. *Floyd R. Mechem.* 6 Mich. L. Rev. 552.

EXTRATERRITORIAL ENFORCEMENT OF STATUTES IMPOSING DOUBLE LIABILITY UPON STOCKHOLDERS, THE. *Arthur K. Kuhn.* 17 Yale L. J. 457.

IMPORTANCE OF THE LAST WILL AND TESTAMENT, THE. *Virgil M. Harris.* 41 Chi. Leg. N. 23.

INCOME OF UNCONVERTED REAL ESTATE, THE. *Anon.* 52 Sol. J. 657.

INJUNCTIONS AGAINST NUISANCES AND THE RULE REQUIRING THE PLAINTIFF TO ESTABLISH HIS RIGHT AT LAW. *William Draper Lewis.* 56 U. P. L. Rev. 289. See *supra.*

INJUNCTION PLANK, THE. *Charles C. Moore.* Urging trial by jury in certain cases of contempt. 12 L. N. (Northport) 87.

INTERNATIONAL BANKING, OR FOREIGN EXCHANGE AND INCORPORATED BANKS. *William G. Bliss.* A discussion of some of the difficulties encountered by banks in this important branch of banking. 25 Bank. L. J. 545.

INVASION BY EXPRESS COMPANIES, AN. *Nathan B. Williams.* Maintaining that express companies have wrongly been allowed to carry mailable matter. 16 Am. Lawyer 260.

IS THE RENVOI A PART OF THE COMMON LAW? *Edwin H. Abbot, Jr.* 24 L. Quar. Rev. 133.

JUDICIAL ASPECTS OF THE PEACE MOVEMENT. *Hayne Davis.* The Hague Arbitration Tribunal. 16 Am. Lawyer 210.

JURISDICTION IN SALVAGE CASES. *James D. Dewell, Jr.* Arguing that in certain cases there is common law jurisdiction. 17 Yale L. J. 513.

LABOR ORGANIZATIONS IN LEGISLATION. *Jerome C. Knowlton.* A criticism of recent decisions and statutes in regard to labor organizations. 6 Mich. L. Rev. 609.

LAW OF IMPEACHMENT IN THE UNITED STATES, THE. *David Y. Thomas.* 2 Am. Pol. Sci. Rev. 378.

LAW RELATING TO MONEYLENDERS AND MONEYLENDING, THE. *Eric G. Floyd.* A discussion of the English law on the subject. 30 L. Stud. J. 158.

LAW TEACHER: HIS FUNCTIONS AND RESPONSIBILITIES, THE. *H. B. Hutchins.* 8 Colum. L. Rev. 362.

LEGAL NATURE OF INTERNATIONAL LAW, THE. *W. W. Willoughby.* Maintaining that to be binding on a nation each rule of International Law must be adopted by the nation. 2 Am. J. of Int. L. 357. See *supra.*

LIABILITY FOR MISREPRESENTATION. *Geo. S. Holmested.* 44 Can. L. J. 513.

LIMITED PARTNERSHIP IN AMERICA AND ENGLAND. *Francis M. Burdick.* A comparison of the law in the two countries. 6 Mich. L. Rev. 525.

LIST OF LEGAL NOVELS, A. *John H. Wigmore.* A classification and discussion of novels containing legal characters or episodes. 2 Ill. L. Rev. 574.

MEANING OF COASTING-TRADE IN COMMERCIAL TREATIES. *L. Oppenheim.* Emphasizing the need of a clearer definition of the term Coasting Trade. 24 L. Quar. Rev. 328.

MODERN DIALOGUE BETWEEN DOCTOR AND STUDENT ON THE DISTINCTION BETWEEN VESTED AND CONTINGENT REMAINDERS. *Albert Martin Kales.* 24 L. Quar. Rev. 301.

MORAL DUTY TO AID OTHERS AS A BASIS OF TORT LIABILITY, THE. II. *Francis H. Bolen.* 56 U. P. L. Rev. 316.

MUNICIPAL GOVERNMENT BY COMMISSION. *W. H. Moore.* Maintaining that municipal government reform is preferable to government by commission. 28 Can. L. T. & Rev. 336.

NEGLIGENCE UNDER THE EMPLOYERS' LIABILITY ACT. *Raymond D. Thurber.* A discussion of the law in New York. 13 Bench & Bar 17.

NEW FEDERAL EMPLOYERS' LIABILITY ACT, THE. *Theodor Megaarden.* Comparing text of act of 1908 with that of act of 1906. 12 L. N. (Northport) 44. See 22 HARV. L. REV. 38.

OKLAHOMA CONSTITUTION, THE. *John Bell Sanborn.* 42 Am. L. Rev. 362; 31 N. J. L. J. 196.

PASS-BOOK AND FORGERY. *W. F. Chipman.* Discussing whether a depositor's failure to notify bank of its acceptance of forged cheque absolves the bank from liability. 28 Can. L. T. 527.

PRESENT PRACTICE WITH RESPECT TO DEFECTIVE TRANSFERS OF STOCK OR SHARES. *N. G. Pilcher.* Pointing out the confusion of present conditions. 5 Com. L. Rev. 152.

PREVENTION OF CRIME, THE. *Marcus Dods.* Advocating indeterminate sentences. 20 Jurid. Rev. 160.

PROBLEM IN THE ILLINOIS LAW OF DESCENT, A. *Albert M. Kales.* 3 Ill. L. Rev. 74.

RECENT EUROPEAN LEGISLATION WITH REGARD TO COMPENSATION FOR INDUSTRIAL ACCIDENTS. *Kenelm E. Digby.* 17 Yale L. J. 485.

SANCTION OF INTERNATIONAL LAW, THE. *Elihu Root.* Maintaining that international law is based on public opinion. 2 Am. J. of Int. L. 451; 53 Ohio L. Bul. 332.

SCIENCE OF INTERNATIONAL LAW, THE: ITS TASK AND METHOD. *L. Oppenheim.* 2 Am. J. of Int. L. 313.

SCIENTIFIC ASPECT OF DUE PROCESS OF LAW AND CONSTRUCTIVE CRIMES, THE. *Theodore Schroeder.* Arguing that too much attention may be paid to judicial decisions and too little to justice. 42 Am. L. Rev. 369.

SPECIFICATION OF THE ABUSES OF THE CONTINGENT FEE, A. From the report of the Committee on Contingent Fees of the New York State Bar Association. 12 L. N. (Northport) 68.

STATUS OF ENEMY MERCHANT SHIPS. *James Brown Scott.* 2 Am. J. of Int. L. 259.

SUBSTITUTE FOR A CENTRAL BANK, A. *Newton D. Alling.* Maintaining that a central bank is neither necessary nor desirable. 25 Bank. L. J. 251.

UNIFORM LAWS BY INTERSTATE COMPACT. *Ben W. Jonnson.* 6 Oh. L. Rep. 208.

UNION LABELS. *W. A. Martin.* A discussion of what protection from infringement should be accorded union labels. 42 Am. L. Rev. 511.

USE OF SUBMARINE MINES AND TORPEDOES IN TIME OF WAR, THE. *C. H. Stockton.* A discussion of the rules adopted at the Hague Conference. 2 Am. J. of Int. L. 276.

WHAT CONSTITUTES THE "END" OF A WILL. *Anon.* 53 Oh. L. Bull. 137.

WHAT PERSONS ARE WITHIN THE PURVIEW OF STATUTES AFFECTING THE ENFORCEMENT OF CLAIMS FOR SERVICES. *C. B. Labatt.* 44 Can. L. J. 369.

WRIT OF HABEAS CORPUS, THE. *Clarence C. Crawford.* An historical treatment of the subject. 42 Am. L. Rev. 481; 125 L. T. 400, 420.

II. BOOK REVIEWS.

THE LAW OF TORTS. By John W. Salmond. London: Stevens and Haynes. 1907. pp. xxviii, 507. 8vo.

The writer of this work is a New Zealand barrister, formerly a Professor of Law in the University of Adelaide, South Australia, and already favorably known as an author through his treatise on Jurisprudence, previously noticed in these pages.[1]

[1] 16 HARV. L. REV. 315.